

§151.4 in reliance upon the exemptions set forth in paragraphs (a)(3) and (4) of this section shall submit to the Commission a 404S filing, in the form and manner provided for in §151.10. Such 404S filing shall contain the following information with respect to such position for each business day that the same person exceeds the limits set forth in §151.4, up to and through the day the person's position first falls below the position limit that was exceeded:

- (1) By Referenced Contract;
- (2) By commodity reference price and units of measurement used for the swaps that would qualify as a bona fide hedging transaction or position gross long and gross short positions; and
- (3) Cross-commodity hedging information as required under paragraph (g) of this section.

(g) *Conversion methodology for cross-commodity hedges.* In addition to the information required under this section, persons who avail themselves of cross-commodity hedges pursuant to (a)(2)(viii) of this section shall submit to the Commission a form 404, 404A, or 404S filing, as appropriate. The first time such a form is filed where a cross-commodity hedge is claimed, it should contain a description of the conversion methodology. That description should explain the conversion from the actual commodity used in the person's normal course of business to the Referenced Contract that is being used for hedging, including an explanation of the methodology used for determining the ratio of conversion between the actual or anticipated cash positions and the person's positions in the Referenced Contract.

(h) *Recordkeeping.* Persons who avail themselves of bona fide hedge exemptions shall keep and maintain complete books and records concerning all of their related cash, futures, and swap positions and transactions and make such books and records, along with a list of pass-through swap counterparties for pass-through swap exemptions under (a)(3) of this section, available to the Commission upon request.

(i) *Additional requirements for pass-through swap counterparties.* A party seeking to rely upon §151.5(a)(3) to exceed the position limits of §151.4 with respect to such a swap may only do so if its counterparty provides a written representation (*e.g.*, in the form of a field or other representation contained in a mutually executed trade confirmation) that, as to such counterparty, the swap qualifies in good faith as a bona fide hedging transaction under paragraph (a)(3) of this section at the time the swap was executed. That written representation shall be retained by the parties to the swap for a period of at least two years following the expiration of the swap and furnished to the Commission upon request. Any person that represents to another person that the swap qualifies as a pass-through swap under paragraph (a)(3) of this section shall keep and make available to the Commission upon request all relevant books and records supporting such a representation for a period of at least two years following the expiration of the swap.

(j) *Financial distress exemption.* Upon specific request made to the Commission, the Commission may exempt a person or related persons under financial distress circumstances for a time certain from any of the requirements of this part. Financial distress circumstances are situations involving the potential default or bankruptcy of a customer of the requesting person or persons, affiliate of the requesting person or persons, or potential acquisition target of the requesting person or persons. Such exemptions shall be granted by Commission order.

§ 151.6 Position visibility.

(a) *Visibility levels.* A person holding or controlling positions, separately or in combination, net long or net short, in Referenced Contracts that equal or exceed the following levels in all months or in any single month (including the spot month), shall comply with the reporting requirements of paragraphs (b) and (c) of this section:

(1) Visibility Levels for Metal Referenced Contracts

(i) Commodity Exchange, Inc. Copper (HG)	8,500
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(ii) <i>Commodity Exchange, Inc. Gold (GC)</i>	30,000
(iv) <i>Commodity Exchange, Inc. Silver (SI)</i>	8,500
(v) <i>New York Mercantile Exchange Palladium (PA)</i>	1,500
(vi) <i>New York Mercantile Exchange Platinum (PL)</i>	2,000

(2) *Visibility Levels for Energy Referenced Contracts*

(i) <i>New York Mercantile Exchange Light Sweet Crude Oil (CL)</i>	50,000
(ii) <i>New York Mercantile Exchange Henry Hub Natural Gas (NG)</i>	50,000
(iii) <i>New York Mercantile Exchange New York Harbor Gasoline Blendstock (RB)</i>	10,000
(iv) <i>New York Mercantile Exchange New York Harbor No. 2 Heating Oil (HO)</i>	16,000

(b) *Statement of person exceeding visibility level.* Persons meeting the provisions of paragraph (a) of this section, shall submit to the Commission a 401 filing in the form and manner provided for in §151.10. The 401 filing shall contain the following information, by Referenced Contract:

(1) A list of dates, within the applicable calendar quarter, on which the person held or controlled a position that equaled or exceeded such visibility levels; and

(2) As of the first business Tuesday following the applicable calendar quarter and as of the day, within the applicable calendar quarter, in which the person held the largest net position (on an all months combined basis) in excess of the level in paragraph (a) of this section:

(i) Separately by futures, options and swaps, gross long and gross short futures equivalent positions in all months in the applicable Referenced Contract(s) (using economically reasonable and analytically supported deltas) on a futures-equivalent basis; and

(ii) If applicable, by commodity referenced price, gross long and gross short uncleared swap positions in all months basis in the applicable Referenced Contract(s) futures-equivalent basis (using economically reasonable and analytically supported deltas).

(c) *404 filing.* A person that holds a position in a Referenced Contract that equals or exceeds a visibility level in a calendar quarter shall submit to the Commission a 404 filing in the form and manner provided for in §151.10, and it shall contain the information regarding such positions as described in §151.5(c) as of the first business Tues-

day following the applicable calendar quarter and as of the day, within the applicable calendar quarter, in which the person held the largest net position in excess of the level in all months.

(d) *Alternative filing.* With the express written permission of the Commission or its designees, the submission of a swaps or physical commodity portfolio summary statement spreadsheet in digital format, only insofar as the spreadsheet provides at least the same data as that required by paragraphs (b) or (c) of this section respectively may be substituted for the 401 or 404 filing respectively.

(e) *Precedence of other reporting obligations.* Reporting obligations imposed by regulations other than those contained in this section shall supersede the reporting requirements of paragraphs (b) and (c) of this section but only insofar as other reporting obligations provide at least the same data and are submitted to the Commission or its designees at least as often as the reporting requirements of paragraphs (b) and (c) of this section.

(f) *Compliance date.* The compliance date of this section shall be sixty days after the term “swap” is further defined under the Wall Street Transparency and Accountability Act of 2010. A document will be published in the FEDERAL REGISTER establishing the compliance date.

§ 151.7 Aggregation of positions.

(a) *Positions to be aggregated.* The position limits set forth in §151.4 shall apply to all positions in accounts for which any person by power of attorney or otherwise directly or indirectly holds positions or controls trading and